No. 16314

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of

CECIL M. JACKSON, Bankrupt,

Appellant,

vs.

A. S. MENICK, Trustee in bankruptcy of Cecil M. Jackson, bankrupt,

Appellee.

BRIEF OF APPELLEE, A. S. MENICK, TRUSTEE FOR CECIL M. JACKSON, BANKRUPT.

CRAIG, WELLER & LAUGHARN,
111 West Seventh Street,
Los Angeles 14, California,
Attorneys for Appellee.

FRANK C. WELLER,
HUBERT F. LAUGHARN,
THOMAS S. TOBIN,
ANDREW F. LEONI,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Statute

Textbook

No. 16314

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of

CECIL M. JACKSON, Bankrupt,

Appellant,

vs.

A. S. MENICK, Trustee in bankruptcy of Cecil M. Jackson, bankrupt,

Appellee.

BRIEF OF APPELLEE, A. S. MENICK, TRUSTEE FOR CECIL M. JACKSON, BANKRUPT.

The record before the Court on the appeal herein is voluminous. There are many hundred pages of testimony as set forth in the Transcript which are a part of this record.

The appellee's Brief is written at what may appear as being at an unusual length. Admittedly it could have been materially shortened and reference made only to the record and transcripts, but it is hoped that the direct quotations from the transcript and the extended explanation of the amended specifications and the amendment thereto, will be of assistance to the Court in its review of this case.

False Financial Statements.

In order to eliminate any confusion with respect to the original specifications and the amendments thereto, the following is set forth:

Specification Six of the original specifications of objections sets forth the giving of a false financial statement to the Security-First National Bank, dated October 6, 1954 and a loan in reliance thereon by the bank of $1,000 on November 9, 1954.

Specification Seven set forth the giving of a false financial statement to the same bank on August 31, 1955 and, in reliance thereon, a loan by the bank of $2,000.

The Amended Specifications of Objection to Discharge set forth Specification Four, the giving of a false financial statement to the same bank dated October 6, 1954 and in reliance thereon by a bank, a loan of $2,000, on or about April 24, 1952.

The Second Amended Specifications of Objection to the Discharge set forth as Specification Four, the giving of a false financial to the said bank dated August 31, 1955 and that in reliance thereon by the bank a loan in the amount of $2,000 was made.

Upon objection that the trustee did not allege the date of loan, the trustee thereupon filed a further amendment setting forth the date of the making of the $2,000 loan as September 14, 1955 with the unpaid balance at bankruptcy of $1,720.

The essence of these Specifications of Objection is that the bankrupt gave a false financial statement to the Security-First National Bank, in reliance upon which the bank extended credit to the bankrupt. The ultimate and succeeding Amendments, which over the objections of the

bankrupt, were permitted by the Referee, were to set forth allegations of facts (which the bankrupt well knew) setting out the date of the false financial statement as August 31, 1955 and the amount of the loan made by the bank to the bankrupt in reliance thereon as $2,000 and the date of the loan as September 14, 1955.

The bankrupt fought desperately, both before the Referee and the United States District Judge on review, to keep out any testimony on the admittedly false financial statement of August 31, 1955. These tactics were followed with objections because the date of the $2,000 loan was not originally given, which was thereupon supplied by a further amendment.

The date of the statement was originally given by the trustee through clerical error and the date of the loan was omitted through oversight and accordingly the Referee allowed the Amendments. The bankrupt frantically attempts to make much of these rulings because he had to admit that the statements were false and untrue. He overlooks the fact that the actions remained the same, *i.e.,* the bankrupt and the bank; that the false financial statement was given by the bankrupt to the bank and that in reliance thereon credit was extended by the bank.

The failure of the bankrupt to secure his discharge by no means rests on this particular specification as we will point out hereinafter. Nevertheless we desire to devote further time and space to point out support to the determinations of the Referee and the Judge.

This Court, in its recent case of *Rameson Bros., et al. v. Goggin,* 241 F. 2d 271, at page 273, said:

> "In any event, following the liberal views in an early case, the Courts have held that a referee has the power to permit specifications objecting to the dis-

> charge to be filed late where good reason appears and the delay is not for the purpose of putting improper pressure upon the bankrupt."

The opinion further states at page 275:

> "Where the referee and District Judge concur as to findings, little is left for Appellate Courts."

A number of cases are then cited in the opinion.

In passing, the writer of this brief recalls that one of the cases which is cited in the *Rameson* case (*Richey v. Ashton,* 143 F. 2d 442), is a case in which the original order denying the discharge which was affirmed on review and subsequently affirmed on appeal by this Court, was made by the writer, who was then acting as one of the Referees of the United States District Court, Southern District of California.

The spirit of the Bankruptcy Act as expressed in Section 14c: "The court shall grant the discharge unless satisfied that the bankrupt has (1) committed," etc. This of itself connotes liberality in presenting to the Court, by the creditors or the trustee, of grounds of objections. The discharge proceeding itself is not governed by stringent technicalities. The bankrupt was not taken by surprise. He knew of the exact date of the statement to the bank. He knew the statements were false. He received a loan of $2,000 from the bank made in reliance thereon and he knew the date on which he received the loan.

Thus the determination of the Referee and the Judge that the bankrupt should answer and explain was not inequitable. "There was no improper pressure put on the bankrupt."

Paully v. Magnotti (2nd Cir., 1950), 182 F. 2d 466, cites the *Richey* case with approval and permitted the filing of specifications after the time had expired.

Matter of Joseph Meckler, Bankrupt (Nov. 6, 1957), 156 Fed. Supp. 20:

> "The discharge of bankrupt is deemed to be pending before the court or referee in bankruptcy until it is granted. Bankruptcy Act Sections 14, subs. b, e, 21 sub. a, 11 U. S. C. A. Sections 32, subs. b, e, 44 Sub. a.
>
> "The court may in its discretion, extend time for entering appearance in bankruptcy proceeding as well as for filing specification of objections to discharge of bankrupt after time has expired for filing objections to discharge. . . .
>
> "Under the Act of 1938, the matter is still in the discretion of the referee. In re Weidemeyer, Richey v. Ashton, 9 Cir., 143 F. Supp. 946. In Northeastern Real Estate Sec. Corp. v. Goldstein, 2 Cir., 91 F. 2d 942, it was held that the period should be extended to prevent injustice when the bankrupt's fraud prevented discovery of grounds for objections."

Matter of W. Taylor Fithian, Bankrupt (Dec. 6, 1957), 156 Fed. Supp. 877:

> "Even one day after expiration of time for filing objections to discharge of bankrupt, referee had jurisdiction to extend time for filing objections.
>
> "Referee should extend period for filing objections to discharge of bankrupt in cases where discovery of possible grounds for objection to discharge has been prevented by acts or omissions of bankrupt; but he should not extend period when trustee is chargeable with unreasonable delay in obtaining facts, without fault on part of bankrupt. . . ."

In the case at bar, it can be easily seen how the chaotic condition of the bankrupt's records precluded the Trustee from analyzing his ramified transactions more speedily.

The Financial Statements Were Admittedly False.

The bankrupt admitted that the financial statements given to the Union Hardware and Metal Company on April 25, 1952 and to the Security-First National Bank on August 31, 1955, were false and untrue and that thereafter he received extension of credits or loans respectively, from the company and the bank.

A *prima facie* case was made by the trustee and as was said in the case of the Second Circuit, *Matter of Federal Provision Co., Inc. v. Ershowsky, et al.,* 94 F. 2d 574 (1938):

> ". . . the laboring oar passes to his hands and he must bring the boat to shore. It is he . . . who alone knows what the explanation is; let him make it, let him satisfy the court. . . ."

The bankrupt's explanations are ingenious, but clumsy and he contends:

1. That he signed the financial statement (Union Hardware and Metal Company) in blank.

From the Transcript, page 74, line 5:

> "I question very much that I ever read this. I know I signed it, but many times—or there has been an occasion when I have signed a statement and it has been filled out or it has been filled out and mailed without my scrutinizing every item on it."

2. That when the said company asked for the financial statement the bankrupt testified [Tr. p. 73, line 7]:

> ". . . I took it to the bookkeeper and he made it out and I signed it and I believe he mailed it to Union Hardware. . . . I didn't know that it said I

did not owe any notes. I didn't make it out and like I say, don't think I even mailed this statement. . . ."

Page 75, line 12:

"I don't think I check it—it was known in the office that there were other loans made, that I had made loans—I mean to say in the bookkeeper's office."

3. As to the Security-First National Bank statement of August 31, 1955, the bankrupt testified [Tr. p. 21, line 8]:

"When the bank asked me for a financial statement —I took the statement to my bookkeeper and I told him that the bank wanted a financial statement, that I wanted to make a loan. I left the entire matter with my bookkeeper."

[Tr. p. 21, line 22]:

"The Referee: When you refer to the accountant, are you referring to the bookkeeper, the same man?

Bankrupt: The same firm, yes."

The Auditor.

When the bankrupt is forced to admit that his financial statements are false what avenue is open to him? He produced Philip Edward Whiting as a witness, who testified that he is a Certified Public Accountant who was familiar with the records of the bankrupt.

[Tr. p. 338, line 6]: "I knew of that loan (Far East Missionary Society) I don't know whether my records happen to indicate it."

[Tr. p. 341, line 7]: "He assisted me in the preparation of the return." (Financial statement of September 30, 1950.)

And explains that he left out the personal obligations "because they were personal."

[Tr. p. 342, line 24], that he prepared the Oct. 31, 1953 statement and that no personal loan obligations of the bankrupt were listed.

[Tr. p. 345, line 12]: At this stage the witness stated, "Very seldom is a financial statement prepared for an individual by our firm."

And when asked if the statement in question (which eliminated many thousands of dollars of existing personal loans) was not "completely inaccurate," the auditor testified and admitted:

[Tr. p. 347, line 5]: "It is not inaccurate. *It is not completely accurate to a lending person to use for the* sale basis of a loan."

The auditor testified of his advice to the bankrupt that:

[Tr. p. 351, line 19]: ". . . it was my determination that they were personal loans and had no bearing whatsoever on the statement that was being prepared, and that was it."

[Tr. p. 353, line 22]: That the bankrupt came to him and said the Union Hardware & Metal Company wanted a statement.

[Tr. p. 354, line 2], that he talked to the bankrupt, that he was aware of the loans ($14,000—Far East Misisonary Society and Mary Koch) and was aware of some loans which he considered personal.

With respect to the financial statement dated August 31, 1955 given to the Security-First National Bank [Trustee's Ex. 3.]

[Tr. p. 302, line 2], the said auditor testified that he was aware of the Far East Missionary $14,000 loan and the other personal loans and omitted them from the statement.

[Tr. p. 362, line 9]: That before the statement was prepared he discussed it with the bankrupt.

[Tr. p. 370, line 11]: That the item of Trade Accounts Payable of $3,000 which appears in the August 31, 1955 statement was an *estimate furnished by the bankrupt.*

[Tr. p. 386, line 26]: But he would not admit that the statement was untrue.

[Tr. p. 399, lines 10-22]: The accountant also testified that the $14,000 from the Far East Missionary Society went into the bank account of the bankrupt which was the only account he then maintained and that it was a *personal and business account.*

[Tr. p. 473, line 1]: The bankrupt explained that a "shaky condition" existed at the time of the giving of the August 31, 1955 statement to the Security-First National Bank. When confronted with the net worth of $70,000, as reported thereon, the attorney from the bankrupt objected. He was overruled by the Referee and the bankrupt passed the buck once more with the testimony [line 26], *"The accountant made out the statement—the bank knew I was shaky."*

And on Transcript, page 474, line 18, when asked "and you realized you didn't have any net worth of $70,000, didn't you?" replied *"I didn't even look at that statement."*

The recent case decided May 23, 1958 by the United States Court of Appeals, Fourth Circuit, *Mountain Trust*

Bank v. Shifflett, 255 F. 2d 719, clearly sets forth the law applicable to several particular phases of this case:

1. That the Referee's Order denying discharge on the grounds that a bankrupt made a materially false statement in obtaining a loan, will not be disturbed on appeal unless clearly erroneous.

2. Referee's findings are clearly significant where he has heard and observed the witnesses. Clear statement of manager of bank as opposed to uncertain testimony of bankrupt. There was an omission from the financial statement of debt due bankrupt's father.

3. (From the opinion, p. 720): "The conclusion of the Referee was fortified by the provision of Section 14, sub. c of the Bankruptcy Act that when an objector to a discharge of the bankrupt shows that there are reasonable grounds for believing that the bankrupt has committed any of the acts—the burden is on the bankrupt to prove he has not committed any of such acts."

The creditor's testimony that he relied upon bankrupt's statements in application for loan, which statement was false and/or incomplete, made a *prima facie* case for the objector and cast a burden of establishing non-reliance upon the bankrupt. In the *Matter of Morris Siegel* (U. S. D. C. E. D. N. Y., 1958), 159 Fed. Supp. 704.

Bankrupt's discharge denied even though he contended that the objecting creditor's own employees induced the bankrupt to make the false statement. *In re Robinette* (U. S. D. C. N. D. Ohio, 1953), 117 Fed. Supp. 367.

The bankrupt could not read or write more than his own name, but had had considerable experience with loans and was aware of the requirement that existed that debts should be fully disclosed and the signing of financial statement which was necessary for the loan, with reckless

indifference as to its truth was sufficient to prevent his discharge, if the statement was relied upon to the detriment of a creditor, although the bankrupt did not actually know the statement was false. (*In re Santos,* 211 F. 2d 887.)

Where wife allowed husband to do business in her name and signed without question a statement concerning her financial condition with reckless indifference to the actual facts and without reasonable grounds to believe the statement was in fact correct—discharge denied. (*David v. Annapolis Banking & Trust Company,* 209 F. 2d 343.)

The mere reliance upon a bookkeeper as to the completeness and correctness of a financial statement prepared by him, without check by the bankrupt to determine its accuracy, is fatal to the bankrupt's discharge. (*In re Strauss* (U. S. D. C. E. D. N. Y., 1933), 4 Fed. Supp. 810; *In re Ratner* (U. S. D. C. W. D. Pa., 1932), 2 Fed. Supp. 530.)

The failure of the bankrupt to read the statements and thus apprise himself of their contents before signing and delivering them was inexcusable. (*In re Haggerty* (E. D. N. Y.), 65 Fed. Supp. 630; *In re Cleveland* (W. D. Mich.), 40 Fed. Supp. 343.)

Records of the Bankrupt.

The Referee found that the trustee had not sustained his Specification One—Failure to Keep Books of Account and Specification Two—Concealment or Failure to Produce Secret Records from which his financial condition and business transactions might be ascertained.

The bankrupt and his auditor both explained the unique system maintained by the bankrupt to record certain of his financial transactions, *i.e.,* memoranda jotted down on

envelopes on or memoranda inside thereof. No ledger, journal or the usual, conventional books of account were kept. The auditor stated that prior to bankruptcy the said usual records and books were not kept. They both insisted that from the records, the financial condition could be ascertained, although the auditor admitted it would take *investigation* with debtors to *verify the accounts*. On these two Specifications as aforesaid, the trustee did not prevail.

However, the Referee found that the bankrupt had failed to satisfactorily account for loss of assets or deficiency of assets to meet his liabilities. And, with justification for so doing, the Referee held that the bankrupt had failed to satisfactorily explain the discrepancy existing between the net worth claimed by him in his financial statements, to-wit: to Union Hardware and Metal Company, net worth $39,240.44; to Security-First National Bank, October 6, 1954, net worth $53,912.96 and August 31, 1955, net worth $71,076.92 and his liabilities at date of bankruptcy, August 2, 1956 of $145,616.43 with assets, including exempt property totalling only $26,625.56.

This Specification five confronted the bankrupt at the inception of the hearing on the objections. Most certainly there was a sound basis for the charge against the bankrupt. He had, by his own statements, a net worth of $71,000 on August 31, 1955 and a net loss of $119,000 ($145,616.43 less $26,625.96) at the date of bankruptcy on August 2, 1956, which most certainly required explanation and far more information and explanation than was given to the Referee by the bankrupt and his auditor. The Referee apparently did not believe the explanation which either of them gave and accordingly made the finding that there was not adequate explanation.

When it is said that the records in possession of the bankrupt were "adequate," it is to be kept in mind that the records were not books of account as such term is commonly used. When the testimony of the bankrupt, his auditor and the auditor for the trustee is reviewed, the records appear as flimsy as a doll house. No books of account as such—loose memoranda of $14,000 and $18,000 loan transactions noted on envelopes, no permanent record maintained in any particular place, form or manner was all he could, or at least, did produce.

The bankrupt insisted without success, both before the Referee and the Judge, that if the Referee found there were records and books of account he could not find that the bankrupt had not satisfactorily accounted for the losses of assets to meet liabilities. The Referee removed one horn of the dilemma from the bankrupt, but he left him firmly attached to the other. The same general situation prevailed in the *Rameson Brothers v. Goggin,* case, *supra,* and there, even though by investigation the trustee was able to ferret out the obligations and assets, *the Court nevertheless held that the bankrupt had failed to account.*

The following shows the difficulty encountered by the bankrupt in accounting for his deficiency in assets to meet his liabilities or in plain words, *where did the money received from many women go?*

1. Transcript of bankrupt's examination August 1, 1957, page 463, line 18 *in re* use of the $2,000 received from the Security-First National Bank—"I don't recall how that was used—I haven't a ledger" Tr. p. 464, line 12 *in re* $3,200 loan from Milton Smith as to the date of borrowing the bankrupt said—"I *believe* in one of those envelopes it will show." [Tr. p. 465, line 14 *in re* loan from A. S. Ameil $250—"I used part of it for the

development of my business, part of it to pay back loans." Tr. p. 465, line 25 *in re* C. A. and Marian Miller $2,900 loan—"I used that to purchase a lot," Tr. p. 466, line 3 "I lost a thousand dollars approximately in the transaction. I used it to pay bills personal and *business.* It was all the same." Tr. p. 467, line 9 *in re* loan from Eugene and Helen Poole $2,000, the bankrupt testified—"Some went into experimentation, some went into paying off loans and some went for personal needs." Tr. p. 468, line 6 *in re* loan from Angel Nahabedian of $12,000 (an accumulation of loans totalling $12,000)—"it was to go in *business,* to pay personal debts and for living expenses." Tr. p. 469, *in re* loan from Ira and Dorothy King of $7,500—the bankrupt explained that some went into business and when asked if the bankrupt's records revealed the loans the bankrupt replied—line 21 *"I don't know what they show."* Tr. p. 469, line 25 *in re* loan from Guy Cooper of $3,000 June 21, 1956. The bankrupt was asked if it went into the business and he answered—*"I do not remember."* Tr. p. 470, line 4 *in re* loan from Billy Long of $6,500—*"I think* the part of that went to pay bills—personal and *business obligations."* Tr. p. 470, line 14 *in re* loan of $900 from Florence Davis May 20, 1955, *bankrupt did not remember if it went into business.* [Tr. p. 470 *in re* loan of $11,140 from Teresa Hagopian 1955 bankrupt testified some of money went into business, *and that he couldn't tell how much.* Tr. p. 471, line 2—"I don't remember." Tr. p. 471, line 12 *in re* loan of $6,700 from R. L. and Beatrice McMillan July, 1955, bankrupt testified some of it went into business *but he didn't remember how* much. Tr. p. 471, line 16 *in re* loan of $2,000 from W. W. McCaslin, 1955-1956 bankrupt testified that it could have gone into the business *or* to pay another loan. Tr. p. 475, line 2 *in re* loan from Floyd Gresset of $550

the bankrupt testified in answer to the question if it went into the business, "I don't remember." Tr. p. 475, line 7 *in re* loan from Far East Missionary Society of $14,000, the bankrupt testified that it went *into the business.* And, later at line 22, "but I still can't see that it was a business obligation."

On the subject of cashiers checks (which incidentally are literally "red flags" when attempts are made to conceal funds), the bankrupt testified Tr. p. 472 that he *bought a lot* of cashiers checks—line 16 because his credit was poor and in some case cash was demanded of him. Tr. p. 473, line 1 "What I'm trying to say is that my financial position was so shaky when I had money I had to either *pay it out in cash where I wouldn't have a record or get a cashiers check where I at least would have a record*—the 'shaky condition' was over several years."

It is quite obvious that if the bankrupt himself did not know what he did with the money or what part of the loans went into business or were used for other purposes, that he could never account or give the explanation required by him. If the bankrupt cannot explain to the Court what became of many thousands of dollars of loans, how and from whom can this fact be ascertained, if not from the bankrupt?

It will be observed from the above that most of the loans referred to hereinabove were business loans or in part business loans, ostensibly made to the bankrupt (as was the loan of the bank) for use in his business. Attention is called to the fact the auditor knew at least *of some* of these loans, but despite this fact, he maintained that they should not be included in the *financial statements.*

The bankrupt and his auditor both attempted to make a fine distinction between loans and other funds which

went into the business as distinguished from that part which was used for "personal affairs." Unless the funds went into the business, the auditor ignored them and in some instances did not even know of their existence. They both contended that funds which went into the business only should be accounted for. Not only that, but also the fact that to creditors, it was none of their business. They also contended that the so-called "personal" loans and the disposition of funds therefrom were no concern of creditors.

The Questions With Respect to Extension of Credit and Reliance Upon the Financial Statements Were Proper.

The appellant's opening brief refers to the case of *In re Leonard* (U. S. D. C. S. D. Cal.), 122 Fed. Supp. 214 (U. S. District Judge Tolin). In this case the discharge of the bankrupt was granted and the Order denying discharge made by the Referee was reversed upon the ground that "the extension of credit must be after the giving of such a statement and in reliance on it." (P. 218.) Two Referees heard the witness, including the manager of the loan company and various complications ensued. The opinion is quite extended and involves a number of matters. We will not comment further thereon other than to observe that no such leading or suggestive questions were asked of the person extending the credit in the instant case. [See Tr. p. 45, line 23.] No objections were made thereto by counsel for the bankrupt.

Note the extended cross-examination of the witness by counsel for the bankrupt thereafter conducted. [Tr. pp. 45-69.] An attempt was made, without success, to show that even though the statement was admittedly false, credit was extended upon the "good character" of the bankrupt.

False Oath.

Specification Six relates to a false oath made by the bankrupt in failing to list a creditor in his schedules—Far East Missionary Society—$14,000 note. All of the facts should be considered on this particular matter.

The bankruptcy was filed August 2, 1956. The attorney for the trustee had apparently received information of activities of the bankrupt in the Orient. This is demonstrated by the fact he asked him [Ex. 7, Tr. of examination of bankrupt, August 20, 1956, p. 53] "Do you have any interests abroad in China or Singapore or anything of that nature?" The bankrupt stated "No," and that the "Mission" owned the property (Far East Missionary Society). Obviously his question alerted the bankrupt to possible further inquiries. He did not know just how much the trustee or his counsel knew.

The examination was continued to September 25, 1956. The bankrupt was called to the stand for further questioning. Thereupon the attorney for the bankrupt [Ex. 7, Tr. p. 58] interrupted the hearing and asked leave to amend the schedules and reveal a loan from the said Far East Missionary Society. The bankrupt was asked how much he owed the said creditor and replied "I don't know"; and later that it was in the neighborhood of $10,000; that he was and still is president and director; that he believed he received the money by check.

The following question indicates that the trustee's counsel had a tip or lead which he was following [Ex. 7, Tr. p. 70]:

> "Q. This Missionary Society disposed of some property did it not in the Crown Colony of Singapore?"

to which the answer was, "That is right." That its headquarters was at his residence; that the Mission property stood in his name [Ex. 7, Tr. p. 80.] Later the bankrupt further testified in the discharge hearing before Referee Walker [Tr. p. 133] $21,303.78 net sales proceeds received from the Mission sale, deposited June 12, 1951; that he was loaned $14,000; that he presided at the meeting of directors when the loan was approved; he produced the Minute Book but it did not include minutes of the loan transaction; that his $14,000 note to the Far East Missionary Society was dated *June 11, 1951;* that the authorization to make the loan was before the date of the note [Tr. p. 162]; that $6,500 of the sale proceeds was also given to Dr. Sherman and an additional $140 given to the bankrupt leaving a balance of $9.81.

Transcript, page 284, in answer to a question by the bankrupt's counsel, Mr. King, a director of the Mission of which the bankrupt was president, testified that the meeting of the directors was held *after* the loan of $14,000 was made; that the meeting was held to make legal the loan [p. 285]—"I felt that we ought to let him take this money and use it."

Transcript, page 287, Mr. King testified; that Mr. Jackson, the bankrupt, presided at the meeting; that no inquiry was made as to the legality of the transaction; that he did not know such a loan was illegal; that quite a number of people had put money up to build the mission; that the other directors did not know about the loan. In summary, practically all of the net funds from the sale of the mission was turned over to the bankrupt.

While there was no determination by the Referee as to the legality of the transaction or the morals thereof, the Referee concluded that there was an intent at the

time of signing the schedules, to keep secret that particular loan and that there was a deliberate intent to thus, by this omission, to give false oath to the schedules.

In the original examination of the bankrupt the trustee was endeavoring to locate any assets. *He ended up locating a concealed liability and one, because of the very nature thereof, the bankrupt, for obvious reasons did not want to reveal.*

The Transcript of the Bankrupt's Examination Taken in the Administration of His Bankruptcy Proceedings.

The trustee offered into evidence the Transcript of the examinations held on August 20, 1956, September 25, 1956 and October 30, 1956 [Trustee's Ex. 7]. Counsel for the bankrupt objected to the offer and was overruled by the Referee and the Transcripts were received, marked Trustee's Exhibit 7.

At the time it was received into evidence the Referee stated [Tr. p. 126]:

> "Perhaps it should be limited to the portions where he fails to explain."

As to the objection to the entire Transcript, the Referee stated [Tr. p. 131]:

> "Well, I'm afraid, Mr. Sulmeyer, that at the moment you will have to rely on my good judgment to eliminate the objectionable matter, the objectionable material, and to accept the material that is relevant and pertinent to the issues."

The bankrupt's admissions are admissible in evidence at the hearing on his right to a discharge and testimony given by the bankrupt in the bankruptcy proceedings or in any other proceeding is competent if relevant to the

issues. Collier on Bankruptcy, Vol. 1, p. 1288 citing *Matter of Frankel* (2nd Cir.), 6 F. 2d 1014, and various other cases. See also *Sampsell v. Anches,* 108 F. 2d 945, of this Circuit.

In fact when the bankrupt seeks his discharge he can be confronted with *everything* which he has testified to in his proceeding which is relevant to the issue on the discharge hearing and the Referee stated that he would only consider those matters which were relevant.

Conclusion.

Bankruptcy Courts are Courts of equity. As stated by Circuit Judge Lemmon in the case of *Autrey Brothers v. Chichester,* 240 F. 2d 498:

> "We have recently adverted to the well-established principle that 'courts of bankruptcy are essentially courts of equity.' Judged in accordance with the equitable norm, the individual and corporate manipulations of the appellant herein with reference to the bankrupt's property are such as to offend the conscience of a discerning chancellor."

Viewing the case at bar from the equitable point of view, the conduct of this bankrupt not only throughout his prior dealings, but in his bankruptcy itself, is reprehensible in the extreme.

The Bankruptcy Act was enacted to relieve the unfortunate but honest debtor from the consequences of his former business transactions.

Matter of Salverson, 14 A. B. R. (N. S.) 422 (U. S. D. C., Minn.):

> "Anyone asking to be discharged from his debts without payment thereof is craving a great privilege. . . . The bankruptcy laws rightly provide a proper

> haven of refuge to a limited number, who, by reason of great misfortunes come fairly within the class which those laws were designed to aid. . . . When people like this bankrupt make up their minds either that they cannot or that they will not pay their debts, all that they need to do, when they invoke the provisions of our very indulgent law, is to go straightforward and see that they shall not come within the teeth of its provisions. Then no harm will come. . . . If they try any other course, they need not be surprised and should not complain if they find that they have pulled the house down upon their own heads. . . . The application for discharge should be denied."

This bankrupt Jackson is not deserving of any consideration at the hands of a court of equity.

We therefore respectfully submit that the judgment of the District Court should be affirmed.

Dated: March 4, 1959.

CRAIG, WELLER & LAUGHARN,

By HUBERT F. LAUGHARN,

Attorneys for Appellee.

FRANK C. WELLER,

HUBERT F. LAUGHARN,

THOMAS S. TOBIN,

ANDREW F. LEONI,

Of Counsel.